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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,969	10/31/2003	Dimiter S. Zagoroff	3567.1001-000	8813
21005	7590	07/12/2004	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			CHENEVERT, PAUL A	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/698,969

Applicant(s)

ZAGOROFF, DIMITER S.

Examiner

Paul A. Chenevert

Art Unit

3612

MLW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/12/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference characters mentioned in the description: door latch retaining link "10" (page 4, line 13; see suggestion below) and bracket "32" (page 5, line 16).
2. The drawings are objected to because the handle (21) in Figure 6A is shown in the open position yet is described as in the closed position. It is suggested to redraw the handle in the closed position as is correctly done in Figure 4A. Please note that the tappet (23) is correctly drawn in Figure 6A and should not be changed.
3. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

*Specification*

4. The disclosure is objected to because of the following informalities: page 4, line 13, "door latch retaining links 10, 11" should be changed to "door latch retaining links 11 (10 hidden from view)". Appropriate correction is required.

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 5, 7-11, 13, & 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vandeberghe et al. in view of Squire et al.

Vandeberghe et al. disclose an apparatus for assisting in the safe opening of a tailgate comprising: a module (electric motor assembly 20), which controls a descent of the tailgate employing a pre-tensioned spiral spring linkage (64) on the tailgate.

However, Vandeberghe et al. do not expressly disclose that the apparatus includes an electro-mechanical actuator positioned inside the tailgate arranged to open tailgate latches by remote control without interfering with manual opening of the latches and by providing gas spring viscous dampers that slow the ascent of the tailgate to the open position.

Squire et al. disclose an apparatus for assisting in the safe opening of a tailgate comprising: gas spring viscous dampers (20), which controls an ascent of the tailgate; and an

Art Unit: 3612

electro-mechanical actuator (40) positioned inside the tailgate arranged to open tailgate latches by remote control without interfering with manual opening of the latches.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the apparatus of Vandenberghe et al., to employ remote controlled latch openers, as taught by Squire et al.

The suggestion/motivation for doing so would have been to open tailgates remotely, as is desired in this vehicle invention.

Therefore, it would have been a desirable and thus a prima facie obvious modification of the apparatus by combining remote controlled latch openers with power assisted descent module to obtain the invention as specified in claims 1 & 9, as taught by the prior references' motivation, and not hindsight from the applicants disclosure.

7. Claims 4 & 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vandenberghe et al., as modified, as applied to claims 3 & 11 above, and further in view of Konchan et al.

Vandenberghe et al., as modified, disclose an apparatus as described above.

However, Vandenberghe et al., as modified, do not expressly disclose that the pre-tensioned spring could be a torsion spring.

Konchan et al. disclose an apparatus for assisting in the safe opening of a tailgate comprising: a torsional spring (torque rod 40), which controls a descent of the tailgate.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the apparatus of Vandenberghe et al., as modified, to employ a torsional spring, as taught by Konchan et al.

The suggestion/motivation for doing so would have been to safely open tailgates reliably and smoothly, as is desired in this vehicle invention.

Therefore, it would have been a desirable and thus a prima facie obvious modification of the apparatus by combining a torsional spring with the power assisted descent module to obtain the invention as specified in claims 4 & 12, as taught by the prior references' motivation, and not hindsight from the applicants disclosure.

8. Claims 6 & 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vandeberghe et al., as modified, as applied to claims 1 & 9 above, and further in view of obvious common knowledge.

Vandeberghe et al., as modified, disclose an apparatus as described above.

However, Vandeberghe et al., as modified, do not expressly disclose that an electrical switch indicates whether the tailgate is ajar.

Examiner takes Official Notice that door ajar indicator switch are not novel and have been used in conjunction with passenger doors and tailgates of SUV's.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the apparatus of Vandeberghe et al., as modified, to employ an indicator switch.

The suggestion/motivation for doing so would have been to warn the operator if the tailgate is not properly latched, as is desired in this vehicle invention.

Therefore, it would have been a desirable and thus a prima facie obvious modification of the apparatus by combining an indicator switch with the power assisted descent module to obtain

Art Unit: 3612

the invention as specified in claims 6 & 14, as taught by the prior references' motivation, and not hindsight from the applicants disclosure.

*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Chenevert whose telephone number is 703-305-0837. The examiner can normally be reached on Mon-Fri (8:30-5:00).

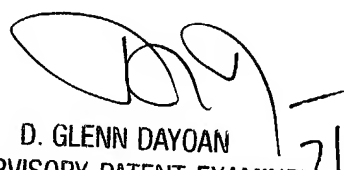
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul A. Chenevert  
Examiner  
Art Unit 3612

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D. GLENN DAYOAN  
SUPERVISORY PATENT EXAMINER  
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7/8/04